

SDPS MEMORANDUM

MEMO NBR: 07-381-GN

DATE: October 2, 2007

SUBJECT: GUIDELINES FOR CONTRACTOR GOVERNANCE AND SENIOR STAFF AND GOVERNING BODY STRUCTURE

TO: SDPS CEO Point of Contact, Project Officers, Contract Specialists

THROUGH: Terris King, Deputy Director, Office of Clinical Standards and Quality

FROM: Barry M. Straube, MD Chief Medical Officer Director, Office of Clinical Standards and Quality

The purpose of this memorandum is to provide QIOs revised guidelines for contractor governance, and governing body composition, service length and compensation. These guidelines are currently recommended for the remainder of the 8th SOW. However, they may be requirements of eligibility prior to the start of the next Scope of Work. This SDPS Memorandum replaces SDPS Memorandum #07-227-GN, dated June 15, 2007.

The contractor governing body should develop and implement a compliance program. At a minimum, an acceptable compliance program should consist of the following:

- \*Written policies, procedures, and standards of conduct that articulate the organization's commitment to comply with all applicable Federal and State standards.

- \*The designation of a compliance officer and a compliance committee.

- \*Effective compliance training and education for the organization's employees, managers and governing body members.

- \*Effective lines of communication between the compliance officer and the organization's employees.

- \*Enforcement of policies, procedures and standards of conduct through well-publicized disciplinary guidelines.

- \*Procedures for periodic internal monitoring and auditing.

- \*Procedures for ensuring prompt response to detected offenses and development of corrective action initiatives.

The governing body sets overall policy and direction for the contractor and retains oversight responsibility. The compliance officer handles the day-to-day operations issues that arise in the following areas: compliance, conflict of interest, ethics, program integrity and compensation and travel costs for senior executive staff and governing body members. When appropriate, the compliance officer refers issues in specific areas to the governing body. The governing body should establish a compliance committee with a minimum of three members and comprised of a majority of independent members. The governing body should refer to the compliance committee for review, any concerns, issues and complaints in

the above-referenced areas.

Should the QIO governing body be too small to establish a compliance committee of the board, CMS recommends that it appoint one independent board member to work with the Compliance Officer to address the concerns above. The Contracting Officer should be advised if the QIO board is too small.

CMS has provided guidance to its fee-for-service contractors on the development and maintenance of an effective compliance program and can be found at:

[http://www.cms.hhs.gov/MedicareContractingReform/12\\_ComplianceProgramGuidance.asp#TopOfPage](http://www.cms.hhs.gov/MedicareContractingReform/12_ComplianceProgramGuidance.asp#TopOfPage).

This information is in large part readily adaptable to the QIOs and should be used to the extent possible. We will be reviewing it for any necessary revisions for the QIOs and, if substantive changes are necessary, will post that document well in advance of the 9th Scope of Work.

The contractor should make publicly available on its website (at a minimum) information regarding its governing body, including:

- a. number of members,
- b. length of appointment,
- c. cap on service,
- d. when appointments are made,
- e. what percentage of the governing body is typically appointed each year,
- f. names, affiliation and compensation (where permitted) of governing body members.

The QIO and the key personnel may not have an ownership interest greater than five percent or operate, or be owned by or affiliated with, a health care facility or an association of health care facilities in the area, as stated in sections 1152 and 1153 (b) of the Social Security Act (the Act), and in 42 CFR 475.100-106.

Each contractor should specify the number of members on its governing body, and should not exceed 20 members except where appropriate justification is provided. Each contractor should adopt policies ensuring governing body membership includes representatives of a variety of healthcare settings and/or disciplines (e.g., hospitals, nursing homes, home health) as well as of non-healthcare backgrounds, so that the Board is not comprised of a majority of physicians or any other type of practitioner or profession. The contractor should seek to include statisticians, epidemiologists, medical records managers and other health professional and information management disciplines, as well as experts from outside the health care field, on the governing body.

Section 1152 (3) of the Act requires a minimum of at least one consumer representative on the QIO governing body. The QIO Manual, Section 2220, will continue to specify minimum qualification criteria for this representative, including that the individual must be a Medicare beneficiary. CMS encourages greater diversity in consumer representation, which would help the QIOs to maintain a focus on the consumer as a customer. Any governing body with more than 10 members should have at least two consumer representatives.

Each contractor governing body should adopt policy ensuring that at least two-thirds of the members are independent and have not been compensated by the QIO within the last year for non-governing body services. The CEO, CFO, CMO and COO should not receive additional compensation for governing body membership.

Officers of the QIO and/or its parent entity should not comprise more than 20% of the governing body. Each contractor should adopt a cap on consecutive governing body member service time of six years in order to ensure new and different perspectives. There would be no restriction on reappointments after a one year break in governing body service. Governing bodies with 1-5 members may exempt one member from the six year term limit, those with 6-10 members may exempt two members from the six year term limit and those with 11 or more may exempt three members from the 6 year term limit. No board member may exceed 9 consecutive years of board service. This requirement excludes ex-officio members of the board.

The start date for counting board service time is the date of the first round of the 7th Scope contracts. Thus, any board member with approximately 5 or more consecutive years of service may work to the end of the 8th Scope of Work. This sixth and final year serves as a one year transition period to achieve compliance with this guideline.

CMS will consider allowing an additional transition period on a case-by-case basis, if a QIO can document that it has made a genuine effort to meet the guideline. In no case will this additional transition period exceed 12 months, though the period may be less than 12 months.

There should be a quorum rule of the governing body that states that no business of the governing body can be conducted unless a majority of the present and available membership consists of independent governing body members.

The duties of governing body members should be delineated in by-laws that are updated annually and should include: attendance and participation in no less than 80 percent of board meetings (e.g., 10 out of 12 monthly meetings per year); participation in an ongoing training plan (development plan) for board members that would include training in ethics, compliance, cultural awareness and other relevant topics, and; participation in sub-committees as appropriate.

Each contractor should consider the development and implementation of annual performance evaluations for the body members, including the CEO, COO and CFO, as well as an annual board self-assessment and an overall performance improvement plan.

Please notify your internal point of contact if you have any questions. He or she may contact the QualityNet Help Desk if additional information and/or assistance are needed.